

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE EAGAN AVENATTI, LLP,
Debtor.

Case No. 8:18-cv-01644-VAP-KESx
PROTECTIVE ORDER

1. INTRODUCTION

A. Purposes and Limitations

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure may be warranted. Accordingly, the Court enters the following Protective Order.

Judgment Creditor Jason Frank Law, PLC (“JFL”) and Judgment Debtor Eagan Avenatti, LLP (“EA”) (collectively, the “Parties”) acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

The Parties further acknowledge, as set forth in Section 12.3 below, that this

1 Protective Order does not entitle them to file confidential information under seal;
2 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
3 standards that will be applied when a Party seeks permission from the court to file
4 material under seal.

5 **B. Good Cause Statement**

6 This action is likely to involve client and financial information for which
7 special protection from public disclosure is warranted. Such confidential
8 information consists of, among other things, confidential business or financial
9 information (including information implicating privacy rights of third parties),
10 information otherwise generally unavailable to the public, or which may be
11 privileged or otherwise protected from disclosure under state or federal statutes,
12 court rules, case decisions, or common law. Accordingly, to expedite the flow of
13 information, to facilitate the prompt resolution of disputes over confidentiality of
14 discovery materials, to adequately protect information the parties are entitled to
15 keep confidential, to ensure that the parties are permitted reasonable necessary uses
16 of such material during efforts to enforce the Judgment, to address their handling at
17 the end of the litigation, and serve the ends of justice, a protective order for such
18 information is justified in this matter. It is the intent of the parties that information
19 will not be designated as confidential for tactical reasons and that nothing be so
20 designated without a good faith belief that it has been maintained in a confidential,
21 non-public manner, and there is good cause why it should not be part of the public
22 record of this case.

23 **2. DEFINITIONS**

24 2.1 Actions: (a) This action to collect or enforce the Judgment against EA,
25 and (b) post-judgment proceedings in the Los Angeles County Superior Court case
26 entitled Jason Frank Law, PLC v. Michael J. Avenatti, Case No. BC706555, to
27 enforce the judgment in favor of JFL against Michael Avenatti (“Avenatti”) on or
28 about November 20, 2018 by the Honorable Dennis J. Landin, Judge of the

1 California Superior Court for the County of Los Angeles, in the amount of
2 \$5,054,287.75 plus post-judgment interest and reasonable attorneys' fees and costs
3 (the "Judgment Against Avenatti").

4 2.2 Challenging Party: A Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 "CONFIDENTIAL" Information or Items: Information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 Counsel: Outside Counsel retained by the Parties and House Counsel
11 (as well as their support staff).

12 2.5 Designating Party: A Party or Non-Party that designates information
13 or items that it produces in disclosures or in responses to discovery as
14 "CONFIDENTIAL."

15 2.6 Disclosure or Discovery Material: All items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: A person with specialized knowledge or experience in a
20 matter pertinent to the litigation who has been retained by a Party or its counsel to
21 serve as an expert witness or as a consultant in the Actions.

22 2.8 House Counsel: Attorneys who are employees of a Party. House
23 Counsel does not include Outside Counsel.

24 2.9 Non-Party: Any natural person, partnership, corporation, association,
25 or other legal entity who is not a Party.

26 2.10 Outside Counsel: Attorneys who are not employees of a Party but are
27 retained to represent or advise a party or are employed by a law firm that has been
28 retained to represent or advise a Party.

1 2.11 Party: JFL and EA as well as their officers, directors, employees,
2 consultants, retained experts, and Outside Counsel (and their support staffs).

3 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
4 Discovery Material in this Action.

5 2.13 Professional Vendors: Persons or entities that provide litigation
6 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)
8 and their employees and subcontractors.

9 2.14 Protected Material: Any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL.”

11 2.15 Receiving Party: A Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13 **3. SCOPE**

14 The protections conferred by this Protective Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from
16 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
17 Material; and (3) any testimony, conversations, or presentations by Parties or their
18 Counsel that might reveal Protected Material.

19 Any use of Protected Material at a hearing or Judgment Debtor Exam shall
20 be governed by the orders of the trial judge or magistrate judge. This Order does
21 not govern the use of Protected Material at a hearing or Judgment Debtor Exam.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until the Designating Party agrees
25 otherwise in writing or a court order otherwise directs.

26 **5. DESIGNATING PROTECTED MATERIAL**

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.
28 Each Party or Non-Party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber the case development process or to
10 impose unnecessary expenses and burdens on other parties) may expose the
11 Designating Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) For information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix at a minimum, the legend
24 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
25 contains protected material. If only a portion or portions of the material on a page
26 qualifies for protection, the Producing Party also must clearly identify the protected
27 portion(s) (e.g., by making appropriate markings in the margins).

28 A Party or Non-Party that makes original documents available for inspection

1 need not designate them for protection until after the inspecting Party has indicated
2 which documents it would like copied and produced. During the inspection and
3 before the designation, all of the material made available for inspection shall be
4 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
5 documents it wants copied and produced, the Producing Party must determine
6 which documents, or portions thereof, qualify for protection under this Order.
7 Then, before producing the specified documents, the Producing Party must affix the
8 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing
10 Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins).

12 (b) For testimony given in depositions that the Designating Party identify the
13 Disclosure or Discovery Material on the record, before the close of the deposition
14 all protected testimony.

15 (c) For information produced in some form other than documentary and for
16 any other tangible items, that the Producing Party affix in a prominent place on the
17 exterior of the container or containers in which the information is stored the legend
18 “CONFIDENTIAL.” If only a portion or portions of the information warrants
19 protection, the Producing Party, to the extent practicable, shall identify the
20 protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate qualified information or items does not, standing alone, waive
23 the Designating Party’s right to secure protection under this Order for such
24 material. Upon timely correction of a designation, the Receiving Party must make
25 reasonable efforts to assure that the material is treated in accordance with the
26 provisions of this Order.

27 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1 et seq. or follow the procedures for
5 informal, telephonic discovery hearings on the Court's website.

6 6.3 The burden of persuasion in any such challenge proceeding shall be on
7 the Designating Party. Frivolous challenges, and those made for an improper
8 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
9 parties) may expose the Challenging Party to sanctions. Unless the Designating
10 Party has waived or withdrawn the confidentiality designation, all parties shall
11 continue to afford the material in question the level of protection to which it is
12 entitled under the Producing Party's designation until the Court rules on the
13 challenge.

14 7. **ACCESS AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party only for prosecuting or
17 defending the Actions. Such Protected Material may be disclosed only to the
18 categories of persons and under the conditions described in this Order. Protected
19 Material must be stored and maintained by a Receiving Party at a location and in a
20 secure manner that ensures that access is limited to the persons authorized under
21 this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel, as well as employees of said
27 Outside Counsel to whom it is reasonably necessary to disclose the information;
28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary;

2 (c) Experts (as defined in this Order) of the Receiving Party to whom

3 disclosure is reasonably necessary and who have signed the “Acknowledgment and

4 Agreement to Be Bound” (Exhibit A);

5 (d) the Court and its personnel in the Action(s);

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional

8 Vendors to whom disclosure is reasonably necessary and who have signed the

9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a

11 custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses, and attorneys for witnesses to whom

13 disclosure is reasonably necessary provided: (1) the deposing party requests that the

14 witness sign the form attached as Exhibit A hereto; and (2) they will not be

15 permitted to keep any confidential information, unless otherwise agreed by the

16 Designating Party or ordered by the court. Pages of transcribed deposition

17 testimony or exhibits to depositions that reveal Protected Material may be

18 separately bound by the court reporter and may not be disclosed to anyone except

19 as permitted under this Protective Order;

20 (i) any mediator or settlement officer, and their supporting personnel,

21 mutually agreed upon by any of the parties engaged in settlement discussions; and

22 (j) any court appointed receiver for EA or Avenatti.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**

24 **PRODUCED IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation

26 that compels disclosure of any information or items designated as

27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification

shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party to disobey a lawful directive from another court.

This provision does not apply to grand jury subpoenas. See In re Grand Jury Subpoenas, 627 F.3d 1143 (9th Cir. 2010) (holding a grand jury subpoena takes precedence over a civil protective order). A Party shall comply with a grand jury subpoena in accordance with the law and nothing in this Order shall preclude such compliance.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to

1 produce a Non-Party's confidential information in its possession, and the Party is
2 subject to an agreement with the Non-Party not to produce the Non-Party's
3 confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party
5 that some or all of the information requested is subject to a confidentiality
6 agreement with a Non-Party;

7 (2) promptly provide the Non-Party with a copy of the Protective
8 Order in this Action, the relevant discovery request(s), and a reasonably
9 specific description of the information requested; and

10 (3) make the information requested available for inspection by the
11 Non-Party, if requested.

12 (c) If the Non-Party fails to seek a protective order from this court within 14
13 days of receiving the notice and accompanying information, the Receiving Party
14 may produce the Non-Party's confidential information responsive to the discovery
15 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
16 not produce any information in its possession or control that is subject to the
17 confidentiality agreement with the Non-Party before a determination by the court.
18 Absent a court order to the contrary, the Non-Party shall bear the burden and
19 expense of seeking protection in this court of its Protected Material.

20 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Protective Order, the Receiving Party must immediately (a) notify in writing the
24 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
25 all unauthorized copies of the Protected Material, (c) inform the person or persons
26 to whom unauthorized disclosures were made of all the terms of this Order, and
27 (d) request such person or persons to execute the "Acknowledgment and Agreement
28 to Be Bound" that is attached hereto as Exhibit A.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 **12. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. No Party waives any right it
17 otherwise would have to object to disclosing or producing any information or item
18 on any ground not addressed in this Protective Order. Similarly, no Party waives
19 any right to object on any ground to use in evidence of any of the material covered
20 by this Protective Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material
23 may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. If a Party' request to file Protected Material
25 under seal is denied by the court, then the Receiving Party may file the information
26 in the public record unless otherwise instructed by the court.

27 **13. FINAL DISPOSITION**

28 Final Disposition means the full satisfaction of the Judgment Against EA and

1 the Judgment Against Avenatti, and the completion and exhaustion of all appeals,
2 rehearings, remands, trials, or reviews of any rulings relating to the Judgments,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 After the Final Disposition, within 10 days of a written request by the
6 Designating Party, each Receiving Party must return all Protected Material to the
7 Producing Party or destroy such material. As used in this subdivision, “all
8 Protected Material” includes all copies, abstracts, compilations, summaries, and any
9 other format reproducing or capturing any of the Protected Material. Whether the
10 Protected Material is returned or destroyed, the Receiving Party must submit a
11 written certification to the Producing Party (and, if not the same person or entity, to
12 the Designating Party) by the 10 day deadline that (1) identifies (by category, where
13 appropriate) all the Protected Material that was returned or destroyed and
14 (2) affirms that the Receiving Party has not retained any copies, abstracts,
15 compilations, summaries or any other format reproducing or capturing any of the
16 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
17 archival copy of all pleadings, motion papers, trial, deposition, and hearing
18 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
19 reports, attorney work product, and consultant and expert work product, even if
20 such materials contain Protected Material. Any such archival copies that contain or
21 constitute Protected Material remain subject to this Protective Order as set forth in
22 Section 4 (DURATION).

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1 Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 IT IS SO ORDERED.

5 DATED: December 11, 2018

Karen E. Scott

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7 KAREN E. SCOTT
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9 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in
7 the case of In re Eagan Avenatti, LLP, Case No. 8:18-CV-01644-VAP-KES. I
8 agree to comply with and to be bound by all the terms of this Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Protective
12 Order to any person or entity except in strict compliance with the provisions of this
13 Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action. I hereby appoint _____ [print or type full
18 name] of _____ [print or type full
19 address and telephone number] as my California agent for service of process in
20 connection with this action or any proceedings related to enforcement of this
21 Protective Order.

23 | Date:

24 City and State where sworn and signed: _____

25 Printed name:

26 | Signature: